IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

Crl.Rev.Pet.No. 297 of 2000(C)

SC.113/1998 of SESSIONS COURT, THRISSUR
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REVN. PETITIONER:

N.N. SURENDRAN,
S/O. NANNAKAL NARAYANAN,
VATTEKKATTUKARA DESOM,
VELLANGALLUR VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DIST.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS:

1. BABU,
S/O. KUPPAPUZHA VEETTIL RAMAN,
VATTEKKATTUKARA DESOM,
THEKKUMKARA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DIST.

2. JAYANANTHAN,
S/O. VAIMELI VEETTIL VELAYUDHAN,
VATTEKKATTUKARA DESOM,
THEKKUMKARA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DIST.

3. SHIBU,
S/O. PULLOOKKARA VEETTIL VELAYUDHAN,
KANNIKULANGARA DESOM,
THEKKUMKARA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DIST.

4. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
SRI. BREEZE M.S., PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 297 OF 2000

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Dated this the 14th day of March 2007

O R D E R

The revision petitioner is the defacto complainant in the case in which the accused stands acquitted for the offence under section 436 r/w 34 of the Indian Penal Code. The prosecution case is that on 16.03.1998 at about 12.15 a.m. the accused, three in number, set fire to the uninhibited house belonging to the mother of the defacto complainant and the same resulted in the loss of Rs.64,000/-

2. The evidence adduced in the matter consisted of the testimony of PWs1 to 13 and Exts.P1 to P9 and MOs 1 to 10. The court below has considered the the evidence adduced in the matter and found that the evidence is lacking to convict the accused. The aspects that was brought out in the evidence that rendered the version that it is the accused who set fire to the house suspicious was that the only witness who testified as to the involvement of the accused was PW3 the mother of the defacto complainant and her evidence was found to be hardly convincing. The independent occurrence witnesses turned hostile and denied that they have witnessed the accident when questioned by the police. It was also noted that the FIR was

considerably delayed. The incident had taken place in the mid night on 16.03.1998 and on the next day at 3.30 p.m. the FIR was registered. It is the case of PW1 the defacto complainant that PW1 developed a chest pain on witnessing the incident and he was hospitalised and hence the delay. The application filed after the closure of the prosecution evidence to summon the doctor and to produce the hospital records was turned down by the court below.

3. On a consideration of the evidence adduced in the matter, I find that the only occurrence witness is PW3 the mother. The court below has rightly noted that PW3 has deposed with respect to the identity of the accused, that she saw the accused running away, only before the court. Although the FIR was registered on the next day at 3.30 p.m. the defacto complainant has not stated in the FI statement that his mother had seen the accused running away from the scene of occurrence. It is also pointed out that the fact that in the cross examination of PW13 the Investigating Officer that PW3 the mother has not stated in her 161 statement that she saw the accused person running away and that she witnessed their visage from their back side and her silence in this regard when questioned by the police later, rendered her version as to the identification of the accused at the trial

really suspicious. It was brought out that A1 having enemity towards PW1 and that he had threatened PW1 as he was involved in a complaint filed by a lady neighbour before the police etc. In the light of the above evidence, it cannot be held that the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt. Benefit of doubt is the privilege of accused. It is the settled law that the revision petitioner at the instance of the defacto complainant can be entertained only if the finding is so perverse and basically erroneous. In the circumstances, I find no reason to set aside the order and remit the matter to the court below.

The revision petition is dismissed accordingly.

K.R. UDAYABHANU, JUDGE.

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